

IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
(ALEXANDRIA DIVISION)

In re:

GUNNING MOTORS, INC.,

Debtor.

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Chapter 11

Case No.: 10-11896-RGM

**RESPONSE TO DEBTOR’S MOTION FOR ORDER (A) AUTHORIZING SALE OF  
DEBTOR’S ASSETS FREE AND CLEAR OF ANY CLAIMS, LIENS AND  
ENCUMBRANCES AND THE ASSIGNMENT OF THE EXISTING LEASE, (B)  
APPROVING BREAK UP FEE AND (C) APPROVING BIDDING PROCEDURES**

As a party in interest pursuant to Section 1109 of the United States Bankruptcy Code (the “Bankruptcy Code”), Subaru of America, Inc. (“SOA”) hereby responds to the Debtor’s Motion for Order (A) Authorizing Sale of Debtor’s Assets Free and Clear of any Claims, Liens and Encumbrances and the Assignment of the Existing Lease, (B) Approving Break Up Fee and (C) Approving Bidding Procedures (the “Debtor’s Motion”).

SOA and the Debtor are parties to a January 23, 2009 Dealer Agreement (the “Dealer Agreement”) pursuant to which, to the extent provided therein, Debtor was authorized to operate a Subaru dealership. The Dealer Agreement represented a continuation of earlier contractual arrangements pursuant to which the Debtor has operated a Subaru dealership for a number of years at the current location in Manassas, Virginia as described in the Debtor’s Motion. Related to events described in the Debtor’s Motion, on June 24, 2009, SOA issued a termination notice for the Dealer Agreement. On August 19, 2009, the Debtor filed a Petition for Review with the Virginia Department of Motor Vehicles which stayed the effective date of the termination.

In resolution of that proceeding, SOA and the Debtor entered into an agreement (the “Agreement”, Exhibit 1). Pursuant to Paragraphs 3 and 4 of the Agreement, as specifically provided therein, the Debtor was subject to certain deadlines to obtain a Qualifying Floor Plan to finance the purchase of new Subaru vehicles or alternatively to enter into a definitive agreement for a proposed sale of the dealership. SOA asserts that the Debtor did not comply with either Paragraph 3 or 4 of the Agreement and SOA preserves all of its rights as set forth in Paragraphs 5 and 6 of the Agreement for termination of any and all of the Debtor’s rights as a dealer of Subaru motor vehicles pursuant to the Dealer Agreement.

Pursuant to the Debtor’s Motion, the Debtor seeks approval to sell certain assets related to the Subaru dealership to Brown Automotive Group, Ltd. or its assignee (“Brown”) or to any alternative buyer pursuant to arrangements approved by this Court (collectively with Brown, a “Proposed Buyer”).

Paragraph 8.5 of the proposed agreement between the Debtor and Brown conditions Brown’s obligations to close, unless waived by Brown, upon approval by SOA which SOA understands to mean that SOA approve Brown or any other Proposed Buyer to operate this Subaru dealership and to enter into a Dealer Agreement with such party.

SOA reserves all rights under applicable law to determine whether conditions and circumstances are appropriate for any such Dealer Agreement and further preserves all of its

rights under the Agreement (Exhibit 1) entered into with the Debtor. SOA reserves the right to supplement its response to the Debtor's Motion.

DATE: April 5, 2010

/s/ Mark J. Friedman

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Attorneys for Subaru of America, Inc.

## CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April, 2010, a copy of the foregoing was served on all parties listed below by first-class mail, unless said party is a registered CM/ECF participant and the Notice of Electronic Filing indicates that notice was electronically mailed to said party.

American Express  
P.O. Box 1270  
Newark, NJ 07101-1270

Automotive Finance Corp.  
43375 Old Ox Road  
Sterling, VA 20166

Chesapeake Petroleum & Supply  
P.O. Box 7610  
Gaithersburg, MD 20898

Chrysler Financial Services  
Americas, LLC  
c/o Terry Frank  
Kaufman & Conoles, PC  
1051 E. Cary Street  
Richmond, VA 23219

Clintas Corporation  
P.O. Box 1207  
Culpepper, VA 22701

Commonwealth of Virginia  
Department of Taxation  
P.O. Box 26626  
Richmond, VA 23261-6626

Dealer Services Corporation  
5735 Industry Lane  
Bldg. A, Suite 9  
Frederick, MD 21704

Dealer Services Corporation  
1320 City Center Drive  
Suite 100  
Carmel, IN 46032

Dixon Hughes PLLC  
255 South Orange Avenue  
Citrus Center Suite 1225  
Orlando, FL 32801

DRAC Subaru Service Loaner  
JP Morgan Chase Bank  
201 N. Central, 8th Flr.  
Phoenix, AZ 85004

JK Auto Parts  
P.O. Box 1249  
Baileys Crossroads, VA 22041

Kaiser Foundation Health Plan  
of Mid-Atlantic States, Inc.  
2101 E. Jefferson Street  
Rockville, MD 20852

Manassas Chrysler Jeep  
8100 Centreville Road  
Manassas, VA 20111

MPK Automotive Systems, Inc.  
3295 River Exchange Drive  
Suite 165  
Norcross, GA 30092

News & Messenger  
P.O. Box 25246  
Richmond, VA 23260-5248

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200 Spring Street  
Herndon, VA 20170

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